IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.2186 of 1994
to
FIRST APPEAL No.2190 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT INDUSTRIAL DEVELOPMENT CORPORATION - Appellant(s)
Versus
AMARSANG MADHUSANG & 10 - Respondent(s)

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Appearance :
MR SN SHELAT, SR.ADVOCATE with MG NAGARKAR for Appellant(s)
MR JV JAPEE for Respondent(s)-Claimant(s)
MR JK SHAH, AGP for Respondents 10 & 11

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT.JUSTICE ABHILASHA KUMARI

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Date : 02/05/2007

ORAL JUDGMENT (Per : HON'BLE MR.JUSTICE J.M.PANCHAL)

1. What is challenged in the instant Appeals filed by the acquiring body, i.e. Gujarat Industrial Development Corporation under Section 54 of the Land Acquisition Act, 1894, (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908, is the legality of common judgment and award dated April 8, 1994, rendered by the learned Extra Assistant Judge, Sabarkantha District at Himmatnagar in Land Acquisition Cases No.597/1990 to 601/1990 by which the claimants have been awarded compensation at the rate of Rs.35/- per sq.mt. for their acquired lands as well as compensation for Wells which existed in the acquired lands.

2. A proposal was received by the Government from the Gujarat Industrial Development Corporation to acquire the lands of village Talod, Taluka: Prantij, District: Sabarkantha, for the public purpose of construction of GIDC Industrial Estate. On consideration of the said proposal, the State

Government was satisfied that the lands of village Talod specified therein were likely to be needed for the said public purpose. Therefore, a notification under Section 4 of the Act was issued which was published in the official gazette on March 26, 1987. Thereafter, necessary inquiry as contemplated by Section 5A was conducted and a report was submitted by the Special Land Acquisition Officer as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the lands of village Talod, which were specified in the notification published under Section 4(1) of the Act, were needed for the public purpose of construction of GIDC Industrial Estate. Therefore, a declaration under Section 6 of the Act was made which was published in the official gazette on April 14, 1988. The interested persons were thereafter served with notices for determination of compensation payable to them. The claimants appeared before the

Special Land Acquisition Officer and claimed compensation at the rate of Rs.75/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer offered compensation to the claimants at the rate of Rs.1.75 per sq.mt. for Survey Nos.488 and 521 whereas he offered compensation to others at the rate of Rs.1.50 per sq.mt. and also offered compensation to the claimants at the rate of Re.1/- per sq.mt. for Kharaba lands, by his award dated March 29, 1990. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determining just amount of compensation payable to them. Accordingly, References were made to the District Court, Sabarkantha at Himmatnagar, where they were registered as Land

Acquisition Cases No.597/1990 to 601/1990.

3. On behalf of the claimants, witness Prabhatbhai Chudabhai Desai was examined at Ex.22. The witness mentioned in his testimony that just adjoining the lands acquired, State Highway was passing and the lands acquired were also quite near the railway line. According to him, the lands acquired were situated in prime locality and were two fields away from the State Highway. It was further explained by the said witness that in order to approach the lands acquired from Highway, tar road was constructed and facility of tar road was also available for the purpose of going from the acquired lands to village Talod. It was mentioned by the said witness that village Talod was one field away from the acquired lands. The witness mentioned before the Court that most of the claimants had made applications seeking permission to use their lands for non-agricultural purpose, but thereafter,

notification under Section 4 of the Act was published and therefore, those applications were not pursued. The witness further stated that Oil Mill was situated quite near the acquired lands whereas just near the lands acquired, Aluminum and Steel factories were also situated. After stating that the Market Yard is operative in Talod town, it was mentioned that just adjoining the acquired lands, Gujarat Krishi University was located. The witness stated that Bank facilities and other facilities were also available in Talod Town. According to this witness, each claimant was able to raise different crops in three seasons and were earning substantial income from the sale of agricultural produces. The witness gave particulars about the Wells which existed in the acquired lands and claimed that the claimants were also entitled to compensation for those Wells. The witness mentioned that the owner of Survey No.258 situated in the Sim of village Talod had made application to District Panchayat

for the purpose of granting permission to him to use his land for non-agricultural purpose and after holding that the average value of the lands was Rs.44.33 ps. per sq.mt., permission to use land for non-agricultural purpose was granted to him on conditions mentioned in Resolution No.384 dated March 9, 1982. The witness produced a copy of the said Resolution at Ex.57. The witness further stated in his testimony that previously, lands from this very village were acquired for construction of Bus Stand regarding which, the Reference Court had rendered award and therefore, on the basis of the Award rendered in Land Acquisition Case No.122/1983, the claimants were entitled to enhanced compensation. The witness produced previous award of the Reference Court relating to the lands of this very village at Ex.58. It was claimed by the said witness that after the acquisition of lands for establishment of Bus Station at Talod town, the prices of the lands situated at Talod

town had considerably increased and therefore, the claimants were entitled to compensation as claimed by them.

Though this witness was cross-examined at length by the learned counsels for the acquiring body and the State Government, nothing substantial could be elicited nor the assertion made by the witness that the lands acquired were situated in prime locality and had potentiality for industrial use and/ or residential purpose could be demonstrated to be untrue.

4. On behalf of the claimants, another witness, namely Mohammadjamil Ibrahimbhai was examined at Ex.77. It may be stated that he was valuer of lands by profession. According to this witness, he had taken into consideration the relevant factors before determining the market value of the lands acquired in the instant case and valued the lands at the rate of Rs.150/- per sq.mt. In order to substantiate his claim, this witness produced

his valuation report at Ex.78.

5. On behalf of the acquiring authorities, witness Abdulrehman Kasambhai Ansari, who was the Land Acquisition Officer and had made award under Section 11 of the Act, was examined at Ex.92. This witness stated that he had taken into consideration all the relevant factors before determining the compensation payable to the claimants and therefore, the claimants were not entitled to enhanced compensation. The witness produced sale-deeds at Exs.65 to 75 in support of his claim that the claimants were not entitled to enhanced compensation. What was mentioned by the said witness was that the valuation report was tainted one and therefore, on the basis of said report, the claimants were not entitled to enhanced compensation.

This witness was cross-examined by the learned counsel for the claimants. In his cross-examination, it was admitted by him that he had not taken into consideration the

importance of lands of village Talod from the view point of industrial and business growth nor the potentiality of the lands was taken into consideration while determining the amount of compensation payable to the claimants.

6. Witness Chimanbhai Chaganbhai Patel was examined at Ex.97 on behalf of the acquiring body. According to him, he had visited the lands acquired for the purpose of valuing the Wells situated therein. The witness produced material to indicate that the valuation of Wells made by the Special Land Acquisition Officer was proper.

7. On appreciation of evidence adduced by the parties, the Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of this very village was a relevant piece of evidence and furnished good guidance for the purpose of determining the market value of the lands acquired in the instant case. The learned

Judge concluded that the sale-deeds which were produced by the Special Land Acquisition Officer for consideration of the Court were not relevant to determine the market value of the lands acquired and that the Resolution of the District Panchayat granting permission to the owner of Survey No.258 to use the land for non-agricultural purpose was a relevant piece of evidence for the purpose of determining the market value of the lands acquired in the instant case. In the ultimate analysis, the Reference court has awarded compensation to the claimants at the rate of Rs.35/- per sq.mt. as well as compensation for Wells giving rise to the abovenumbered Appeals.

8. This Court has heard Mr.S.N.Shelat, learned Senior Advocate, instructed by Mr.M.G.Nagarkar, learned counsel for the acquiring body as well as Mr.J.V.Japee, learned counsel for the claimants and Mr.J.K.Shah, learned Assistant Government

Pleader, for the respondents No.10 and 11, at length and in great detail. This Court has also considered the paper-book supplied by the learned counsel for the appellant which includes oral as well as documentary evidence adduced by the parties before the Reference Court.

9. The contention that the lands which were acquired previously for establishing the Bus Stand were situated in the prime locality and therefore the previous award of the Reference Court relating to the lands of this very village could not have been made basis for the purpose of awarding enhanced compensation to the claimants cannot be accepted. From the evidence on record, it is evident that the lands acquired in the instant cases had better advantages than the lands which were acquired for the establishment of Bus Stand. As noticed earlier, it was established that the lands acquired were situated quite near the State Highway. Not only tar road was

available for approaching the State Highway but tar road was also available for the purpose of approaching Talod town which was situated one field away from the acquired lands. The record further shows that quite near the acquired lands, Agricultural University was located whereas industries had also come up near the acquired lands. Thus, there is no manner of doubt that the lands acquired had high potentiality for industrial use and/or commercial use. It may be stated that the witness examined by the acquiring body had produced map at Ex.64. A perusal of the map makes it more than clear that the lands acquired in the instant case were situated on the north of Gamtal of village whereas the lands which were acquired earlier for the purpose of establishment of Bus Stand were situated on the south of Gamtal of the village. On appreciation of evidence adduced by the parties, the Reference Court has recorded a finding of fact that the lands which were acquired in the instant case and

the lands which were acquired earlier for the purpose of establishing the Bus Stand were situated at equal distance from the Gamtal of the village. This finding of fact is not demonstrated to be untrue. No evidence was adduced by the acquiring authorities to establish that the lands acquired earlier from Talod town for the purpose of establishment of Bus Stand were better in qualities or situated in good locality and therefore, the previous award of the Reference Court should not have been relied on for the purpose of determining the market value of the lands acquired in the instant case. On the facts and in the circumstances of the case, this Court is of the opinion that the Reference Court was justified in placing reliance on the previous award of the Reference Court relating to the lands of this very village for the purpose of determining the market value of the lands acquired in the instant case.

10. The contention that the market value of the lands acquired should have been ascertained with reference to the sale-deeds produced by the witness for the acquiring body at Ex.65 to 75 has also no substance. It may be mentioned that in the instant case, notification under Section 4(1) of the Act was published in the official gazette on March 26, 1987, whereas except Ex.70, which is dated February 7, 1987, all the documents produced were of the year 1983-84. Ex.70 indicates that Survey No.360 and 365/5 of Talod town admeasuring 94.3 Are were sold for a sum of Rs.35,000/-. If the said document is taken into consideration, the rate of the land would come to Rs.1.02 ps. per sq.mt. However, the witness for the acquiring body, namely Abdulrehman Kasambhai Ansari, examined at Ex.92, has fairly admitted in his cross-examination that in some of the sale instances, true price of lands was not indicated and recovery of the amount due towards stamp duty was effected after

ascertaining the true value of the lands and that even penalty was also imposed. In view of the abovementioned admission made by the witness for the acquiring body, this Court is of the opinion that the Reference Court was justified in not placing reliance on Ex.70 for the purpose of determining the market value of the lands acquired in the instant case.

11. This Court further finds that one Bhawanji Mohanji was the owner of Survey No.258 situated in the Sim of village Talod. He was desirous of using his land for non-agricultural purpose. Therefore, he had made application under Section 65 of the Bombay Land Revenue Code seeking permission to use his land for non-agricultural purpose. Exhibit 57 indicates that the Executive Committee of the Panchayat granted permission, as prayed for by Bhawanji Mohanji and while granting the said permission, it was held that the average price of the lands

was Rs.44.33 ps. per sq.mt. If this document is taken into consideration, the claimants would be entitled to more than what is awarded to them by the Reference Court in the instant cases. However, the claimants have not filed Appeals for awarding more compensation to them than awarded by the Reference Court and therefore, it is not necessary for this Court to examine the question whether the claimants would be entitled to more than what is awarded to them by the Reference Court. However, one thing which becomes very evident is that the compensation awarded to the claimants cannot be said to be on higher side so as to warrant interference by this Court in the instant Appeals. The calculation of compensation payable to the claimants made by the Reference Court on the basis of the previous award of the Reference Court relating to the lands of this very village is not demonstrated to be erroneous. It is well-settled that the previous award of a Court

relating to the lands of a village which has attained finality can be treated as good piece of evidence for the purpose of evaluating the market value of the similar lands acquired subsequently from the same village. Therefore, this Court is of the opinion that the Reference Court was justified in placing reliance upon the previous award of the Reference Court relating to the lands of this very village for the purpose of determining the market value of the lands acquired in the instant case. On re-appreciation of evidence, this Court finds that correct findings of facts have been arrived at to which well-settled principles of law have been applied. The learned counsel for the appellant could not persuade this Court to take a view that the claimants were entitled to less compensation than awarded by the Reference Court and therefore, the finding that the claimants are entitled to compensation at the rate of Rs.35/- per sq.mt. for their acquired lands

deserves to be upheld.

12. As far as compensation for Wells is concerned, this Court is of the opinion that when the agricultural land, irrigation of which was possible from the water of the irrigation Well, is acquired, the value of the land so acquired will have to be determined taking into consideration the irrigation facility it had from the Well and therefore, irrigation Wells which existed in the acquired agricultural lands could not have been separately valued. This is so in view of the decision of the Supreme Court in *O.Janardhan Reddy & Ors. v. The Sol.Dy.Collector. L.A. Unit-IV, LMD, Karimnagar, A.P. & Ors. - JT 1994(6) S.C. 366*. Therefore, this Court is of the opinion that the compensation awarded by the Reference Court to the claimants regarding the Wells which existed in the acquired lands deserves to be set aside and to that extent the Appeals will have to be allowed.

13. For the foregoing reasons, all the Appeals partly succeed. The common judgment and award dated April 8, 1994, rendered by the learned Extra Assistant Judge, Sabarkantha District at Himmatnagar in Land Acquisition Cases No.597/1990 to 601/1990, awarding compensation to the claimants at the rate of Rs.35/- per sq.mt. is hereby upheld. However, the compensation awarded to the claimants for the Wells which existed in the acquired lands, as well as solatium thereon is hereby set aside. The other statutory benefits which have been conferred on the claimants by the impugned award are not interfered with at all and are hereby upheld. The Appeals are allowed to the extent indicated hereinabove. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment immediately.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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